

REMARKS/ARGUMENTS

Applicants thank the Office for indicating that Claims 15-26 are allowed.

Applicants amend Claim 1 to move the claim preamble into the claim body. The amendment draws support from Claim 1 as filed and from the specification at page 1, lines 8-15. With such support, the amendment does not add new matter.

Amended Claim 1 can be distinguished from the cited references on at least two bases. First, both original Claim 1 and amended Claim 1 require “flexible polyolefin foam”. Second, Claim 1 is drawn to a particular structure located below a roof deck and within an attic space.

Crookston (US Patent 5,473,847) fails to support prima facie obviousness much less a rejection under 35 USC 103(a). Crookston discloses, at column 2, lines 5 – 36, a roofing system that comprises, in part, a roof deck having an upper surface and a rigid foamed plastic insulation member disposed on top of the upper surface of the roof deck. The insulation member includes interconnected air channels for venting air and water vapor to the perimeter of the roofing system. Nothing in Crookston teaches or suggests placing foam below the roof deck for any purpose, much less for use as an unitary attic rafter vent and insulation dam assembly. In addition, Crookston fails to recognize or address a need to establish and maintain ventilation between a soffit region of a building roof (under the eaves and under the roof deck) and open attic space which, by definition, is beneath the lower surface of the roof deck. Further, Crookston neither teaches nor suggests moving away from a clear mandate for a rigid foam toward the equally clear and opposite requirement for a flexible foam in pending Claim 1. Finally, Crookston requires a grid of intersecting channels as opposed to the longitudinal channels of pending Claim 1. Based upon the foregoing differences, the teachings of Crookston cannot support even an assertion of prima facie obviousness.

Georgeau et al. (US Patent 6,679,018) adds nothing to the teachings of Crookston that bolsters an assertion of prima facie obviousness. Georgeau et al., like Crookston, addresses materials to be placed on top of the upper surface of the roof deck and uses a rigid insulation board (e.g. 2 inch thick polyisocyanurate insulation board per column 6, lines 3 – 4). Nothing in Georgeau et al. recognizes or addresses the problem solved by Applicant’s claimed invention or guides a skilled artisan to

ignore the clear requirement for a rigid foam in favor of a flexible foam or explore problems beneath a roof deck's lower surface. The Office's citation to column 4, line 22 relates to a "membrane" rather than a foam. Georgeau et al. teaches application of such a membrane over fiberglass reinforced gypsum board that is bonded to the rigid foam at column 6, lines 1-13. The membrane is not a substitute for the foam. As such, Georgeau et al. fails to establish even prima facie obviousness, either alone or in combination with Crookston.

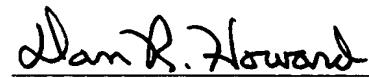
Gilbert (US Patent 3,879,508), whether taken alone or in conjunction with Georgeau et al., fails to overcome shortcomings evident in a comparison of Crookston's teachings with the pending claims. Gilbert discloses corrugated foamed thermoplastic resin sheet (see Claim 1). Gilbert defines "sheet" as having a maximum thickness of 0.5 inch at column 3, lines 1-8. Although Gilbert mentions use of the corrugated foam in roof insulation at column 4, lines 50-51, nothing in Gilbert suggests that such roof insulation be placed in any location other than atop a roof deck as taught by both Crookston and Georgeau et al. While Gilbert introduces flexible foams at column 2, lines 49-50, nothing in Gilbert pushes a skilled artisan to substitute a flexible foam for the rigid foam so clearly mandated by Crookston. Finally, the foam sheet of Gilbert has a thickness of no more than half of the thickness specified in pending Claim 5. Based upon the foregoing differences, with no teaching or suggestion in any of Gilbert, Georgeau et al. or Crookston to guide a skilled artisan to overcome the differences, amended Claim 1 and dependent Claims 2-13 are patentable over the cited references.

The Office cites Gregory, Jr. et al. in combination with the above references as support for a rejection under 35 USC 103(a). Applicants respectfully suggest that Gregory, Jr. et al. fails to substantiate an assertion of prima facie obviousness, much less obviousness under 35 USC 103(a). Applicants appreciate the Office's citation to reference numeral 12, but disagree with the Office's characterization of the feature assigned to that reference numeral. Gregory, Jr. et al. refer to "12" as a "flattenable perforated corrugated device" at column 1, lines 66-67 and require that it extend "only partially across the width of the top side of the body" at column 2, lines 15-17. Gregory, et al. teaches use of either fiberglass bats or rigid foam planks as insulation materials at column 2, lines 1 – 2 and 34 – 36. Such a teaching fails to motivate a

skilled artisan to even try using a flexible polyolefin foam. Gregory, et. al. discloses use of paper or plastic as suitable materials for perforated corrugations used as ventilation baffles. This does not equip a skilled artisan to use a non-perforated film. Gregory, et. al., like the three references discussed above, fails to recognize or address a need for an insulation dam in addition to a need for ventilation. As such, the cited combination fails to establish prima facie obviousness.

Applicants respectfully ask the Office to withdraw the rejections of Claims 1-13 and 14 under 35 USC 103(a) and allow Claims 1-14 together with allowed Claims 15-26 at an early date.

Respectfully submitted,



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